FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No.570 of 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATE : 29th March, 2007.

Heard Shri Gilda, learned counsel for the appellant and Shri Sononi, learned counsel for the respondent no.1.

The respondent no.1 is the original plaintiff. A suit was filed by the plaintiff for grant of permanent injunction against defendants nos.1 and 2/present appellants restraining them from digging and constructing a canal of Lower Vana Project through the middle portion of the plaintiff's field and a mandatory injunction directing them to restore the position of the field to its original one, as it was, prior to the commencement of the canal.

It was the case of the plaintiffs that the defendant no.3/present respondent no.2 is a rich man and he had managed to divert the way of the canal from the field of the plaintiff so as to ensure that the canal does not pass from his field.

The trial and the appellate Court considered the oral and documentary evidence on record to hold that the plaintiff had succeeded in proving that the construction of

canal through the field of the plaintiff was contrary to the map which was earlier approved by the Government. The Courts further held that the construction of the proposed canal was injurious to the plaintiff and the plaintiff was, therefore, entitled to the relief of perpetual and mandatory injunction as claimed by him.

It is revealed from the judgments of both the Courts that in spite of sufficient chances, none entered into witness box on behalf of defendants nos.1 and 2. Defendant no.3 also did not appear at the time of the trial. Hence, the claim made by the plaintiff was actually not defended by the defendants. It appears that before the first appellate Court, an application was filed by the appellants for production and exhibition of certain documents on record. The Civil Application was allowed as the non-applicants had not filed any reply to the same and had not opposed the prayer made therein.

I have minutely perused both the judgments. It is canvassed on behalf of the appellant that the appellate Court was not justified in failing to consider the documents which were permitted to be produced before the appellate Court while rendering the impugned judgment.

On the other hand, it was submitted on behalf of the respondent no.1 that the perusal of the documents show that these documents are not relevant for determining the issue involved in the matter which

pertains to the construction of the canal through a particular portion of the field of the plaintiff. It is pointed out on behalf of the respondent no.1 that the respondent no.1/plaintiff had no objection if the appellant constructed the canal as per the original map to which the plaintiff had also consented. But, none of the documents produced by the appellant before the first appellate Court, by any stretch of imagination can show that the canal was intended to be constructed on the present site.

I have carefully perused the documents produced by the appellant before the first appellate Court. The submission made on behalf of the respondent no.1 that these documents do not disclose that the Government proposed to construct the canal through the middle portion of the field of respondent no.1 is acceptable and correct. Both the Courts have considered the original plan/map which was received from the custody of the appellants before the trial Court to hold that the appellants had not proceeded with the construction work of the canal as per the original map. The Courts have further considered the other voluminous evidence on record to hold that the plaintiff was entitled to the grant of permanent and mandatory injunction as sought for.

As already mentioned hereinabove, the documents placed by the appellants before the first appellate Court merely relate to the acquisition of 0.7 R

of land belonging to the plaintiff/respondent no.1 but, none of the documents show the location through which the canal was to be constructed as per the original map.

Since no substantial question of law arises for consideration in this Second Appeal, the same is dismissed with no order as to costs.

JUDGE

APTE